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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,009	10/15/2001	Neil John Hursey	550-276	9583

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EXAMINER

COLIN, CARL G

ART UNIT	PAPER NUMBER
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2136

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,009

Applicant(s)

HURSEY ET AL.

Examiner

Carl Colin

Art Unit

2136

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) see att.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Pursuant to USC 131, claims 1-54 are presented for examination.

Specification

2. The abstract is objected to because of the following informalities: the reference number descriptions are not consistent with the description in the disclosure. Also, “mobile data processing device 2, 6 is updated”, is not clear whether it is one device that the sentence is referring to (device 2 and 6) or (device 2 or 6); also, figure 3 on line 11 should be deleted or integrated in the sentences as appropriate. Appropriate correction is required.

The specification is also objected to because of the following informalities: there is lack of consistency between the reference numbers and the description. For instance, reference 34 is referred to virus definition data and malware definition data. Applicant's cooperation is requested in correcting any similar errors of which applicant may become aware in the specification.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "2" and "6" have both been used to designate mobile data processing device on page 6, lines 17 and 18. Appropriate correction is required.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “6” has been used to designate both personal digital assistant and mobile data

Art Unit: 2136

processing device on page 6, line 11 and line 17. Also, reference character "34" on line 25, page 7 and lines 17-18 and on page 8, line 2, has been used to designate virus definition data, library of virus definition data, and malware definition data respectively.

Reference characters "20" and "30" on page 7, line 5 and line 15 cite have both been used to designate malware scanner. Appropriate correction is required.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 4, 8, 22, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 2136

4.1 Claims 4, 22, and 40 recite the limitation "said digital signal". There is insufficient antecedent basis for this limitation in the claim. Claim 8 recites the limitation "said step of transferring". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The computer program product recited in claims 1-18 without a computer-readable medium needed to realize the computer program's functionality is non-statutory functional descriptive material. See MPEP § 2106. IV.B.1(b).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002

Art Unit: 2136

do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6.1 **Claims 1-54** are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Publication US 2002/0042886 to **Lahti et al.**

6.2 **As per claims 1-3, 10-12, 19-21, 28-30, 37-39, and 46-48, Lahti et al** discloses a method and apparatus for controlling a mobile data processing device to update malware definition data for a malware scanner of said mobile data processing device, said apparatus comprising:

- (i) link establishing logic operable to establish a wireless telephony link between said mobile data processing device and a public wireless telephony network (pages 1-2, paragraph 20);
- (ii) update receiving logic operable to receive malware definition updating data at said mobile data processing device via a data channel of said wireless telephony link (pages 1, paragraph 7);
- and
- (iii) malware definition updating logic operable to update malware definition data stored upon said mobile data processing device using said malware definition updating data (page 1, paragraphs 6-12).

Lahti et al further discloses wherein said mobile data processing device is a mobile telephone or personal digital assistant having a connection to said wireless public telephony network (page 1, paragraph 13).

As per claims 4-7, 13-16, 22-25, 31-34, 40-43, and 49-52, Lahti et al discloses the limitation of wherein said malware definition updating data includes a digital signature, the update data is cryptographically signed to prevent the update information from attack that meets the recitation of further comprising verifying code operable to verify said digital signature before using said malware definition updating data (page 2, paragraph 12) and further discloses wherein said public wireless telephone network is one of a CDMA network and a GSM network (page 1, paragraph 9) and discloses wherein said data channel is also used for passing text messages wherein said text messages are SMS messages (page 1, paragraph 10 and page 2, paragraphs 24-25).

As per claims 8-9, 17-18, 26-27, 35-36, 44-45, and 53-54, Lahti et al discloses the limitation of wherein said step of transferring is initiated from a source of said malware definition updating data (page 2, paragraph 25) wherein said data channel is open whenever said mobile data processing device is switched on and connected to said public wireless telephony network (page 2, paragraph 25).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as the art discloses virus detection, analysis, and update, in real time.

US Patents: 6,338,141 Wells; 6,279,113 Vaidya ; 6,205,551 Grosse ;
5,948,104 Gluck et al.

7.1 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl Colin whose telephone number is 571-272-3862. The examiner can normally be reached on Monday through Thursday, 8:00-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cc

Carl Colin
Patent Examiner
June 15, 2005


AYAZ SHEIKH
SUPERVISORY PATENT EXAMINER
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